

REMARKS-General

1. The newly drafted independent claim 41 and 48 incorporate all structural limitations of the previously presented claims 21 and 34 respectively and include further limitations previously brought forth in the disclosure. No new matter has been included. All new claims 41-55 are submitted to be of sufficient clarity and detail to enable a person of average skill in the art to make and use the instant invention, so as to be pursuant to 35 USC 112.

2. With regard to the rejection of record based on prior art, Applicant will advance arguments to illustrate the manner in which the invention defined by the newly introduced claims is patentably distinguishable from the prior art of record. Reconsideration of the present application is requested.

Response to Rejection of Claims 21-40 under 35USC112

3. The applicant submits that the newly drafted claims 41-55 particularly point out and distinctly claim the subject matter of the instant invention, as pursuant to 35USC112.

Response to Rejection of Claims 21-40 under 35USC103

4. The Examiner rejected claims 21-40 under 35USC103(a) as being unpatentable over Wang (CN 1,342,811) in view of Official Notice (ON). Pursuant to 35 U.S.C. 103:

“(a) A patent may not be obtained thought the invention is **not identically** disclosed or described as set forth in **section 102 of this title**, if the **differences** between the subject matter sought to be patented and the prior art are such that the **subject matter as a whole would have been obvious** at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.”

5. In view of 35 U.S.C. 103(a), it is apparent that to be qualified as a prior art under 35USC103(a), the prior art must be cited under 35USC102(a)~(g) but the disclosure of the prior art and the invention are not identical and there are one or more differences between the subject matter sought to be patented and the prior art. In

addition, such differences between the subject matter sought to be patented as a whole and the prior art are obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

6. In other words, the differences between the subject matter sought to be patent as a whole of the instant invention and Wang which is qualified as prior art of the instant invention under 35USC102(b) are obvious in view of ON at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

7. The applicant respectfully submits that the differences between the instant invention and Wang are not obvious in view of ON under 35USC103(a), due to the following reasons.

8. Regarding the newly drafted claim 41, Wang fails to teach an urban road structure, consisting of a ground motorway exclusively for use by motor vehicles to define a motorway layer, wherein the motorway comprises a plurality of expressways and a plurality of minor arterials, wherein each of the minor arterials is built between two of the expressways for performing as a ramp of the respective expressways.

9. Wang generally discloses, as best understood by the English translation of the Chinese specification, a dividing stereo road with parking area, which comprises three layers, wherein the first layer is pedestrian squares, the second layer is the enclosed motor road and parking area, the third layer is the road especially for bicycles. These arrangement does not match the urban road structure of the instant invention because the ground layer of the instant invention is the recited motorway, while a manway is exclusively reserved for a manway layer which is positioned above the motorway. There is no distinction between manway and any bicycles way.

10. Moreover, the layer for vehicle transportation as disclosed in Wang is actually the second floor and NOT the ground floor, which is reserved for pedestrian squares for Wang. In Wang, it is disclosed that in order to separate pedestrians and the vehicles, generally it is not allowed for the vehicles including bicycles to move in this layer. This is in stark contrast with the instant invention because the “ground floor” which is the motorway of the instant invention does allow vehicles to move into it.

11. Wang also fails to anticipate a manway exclusively for use by pedestrians to define a manway layer, wherein the manway is built and positioned above the motorway at a predetermined elevation with respect to the motorway, wherein the motorway layer and the manway layer forms a double-layered road structure in such a manner that the motorway layer of the motorway is adapted for supporting a predetermined volume of traffic flow and minimizing an adverse impact of the traffic flow on the manway, and the manway layer of the manway is adapted for urban forestation and allowing social activities to be carried out on the manway layer without being affected by the traffic flow of the motorway, wherein the motorway and the manway is arranged to form a community transportation network in such a manner that social activities of human beings is confined to be conducted on the manway and vehicular traffic is confined to the motorway without interfering with the social activities on the manway.

12. The particular arrangement of the motorway and the manway is to separate traffic from human activities. In Wang, the vehicle layer is set at the middle between pedestrian squares and bicycles layer. This arrangement is completely different from the instant invention and brings different effect. For example, the pedestrian squares will suffer severe noise pollution because sound waves tend to reflect in an enclosed area. The noise reaching the pedestrian squares will reflect back and forth within this layer and the people working or living in this layer will suffer substantial noise pollution. In contrast, the manway of the instant invention is positioned above the motorway, any noise coming from the motorway will first be trapped by the layer accommodating the motorway. Remaining noise will dissipate very rapidly from a relatively open area of the manway.

13. The examiner has merely cited Fig. 1 of Wang and concludes that the instant invention obvious over Wang in view of ON. The applicant respectfully submits that to reject claims in a patent application under 35 U.S.C. 103, the Examiner must show an unrebutted *prima facie* case of obviousness. See *In re Deuel*, 51 F.3d 1552, 1557, 34 USPQ2d 1210, 1214 (Fed. Cir. 1995). A *prima facia* case of obviousness requires setting forth: (a) the differences in the claim over the applied references; (b) the proposed modification of the applied references necessary to arrive at the claimed subject matter; and (c) an explanation why such proposed modification would be

obvious. The examiner thus did not provide a reasoned analysis as to why the instant invention is obvious over Wang, especially when the arrangement disclosed in Wang is completely different from what is recited in the instant invention. If the instant invention is obvious over Wang "in view of ON", any variation (i.e. any improvement on road system) would have been obvious.

14. The only mention of the particular configuration of road system/structure is in applicants own specification and claims. Accordingly, it appears that the Examiner has fallen victim to the insidious effect of a hindsight analysis syndrome where that which only the inventor taught is used against the teacher in W.L. Gore and Associates v. Garlock, Inc., 220 USPQ 303, 312-313 (Fed. Cir. 1983) cert. denied, 469 U.S. 851 (1984).

15. The Examiner rejected claims 21-40 under 35USC103(a) as being unpatentable over Lee (WO01/94702) in view of Wang (CN 1,342,811). The examiner argues that Lee does not teach a greenway positioned above a motorway. Yet he alleges that Wang teaches a greenway positioned above a motorway. This allegation is not true because the layer which is positioned above the vehicle layer is for bicycles use. The pedestrian squares are still positioned underneath the layer where the vehicle is moving. Therefore, the examiner has failed to provide a reasoned analysis as to the obviousness of the instant invention.

16. The instant invention provides a community transportation network which substantially divides traffic flow and pure pedestrians activities. On the other hand, Lee merely discloses a multi-layer road system comprising at least two floor with an inter-floor road for securing parking and living spaces. This is totally different from the features claimed in the instant invention. In the instant invention, each of the two layers of roads is exclusively dedicated for different uses, whereas in Lee, the roads of multi-layer structure are largely used for the same purpose. The examiner seems to ignore this crucial distinction.

17. The applicant reiterates that the main patentable subject matter of the instant invention is NOT the division of layers of traffic flow. Rather, the instant invention relates to layers of road which support different social and community activities. The lower layer of road is exclusively used for traffic flow, while the upper layer of roads are

exclusively reserved for people. The result is that traffic and normal social or community activities do not interfere with each other so as to maximize the efficiency of each kind of activity. Accidents relate to this interference can also be minimized, and these in turn minimize the overall social cost in dealing with the related problems.

18. The applicant respectfully submits that in *KSR v Teleflex* (550 US 398, 82USPQ 2d 1385, 2007), the Supreme Court stated that in determining unobviousness, broad inquiry must be made. The test laid down by the court is a multifactor one, wherein the traditional TSM test is but one of the factor. In the instant invention, the examiner does not consider the entire scope of the cited references. More specifically, the examiner does not consider each of the cited references as a whole and ignore their traffic arrangement. None of the cited references provide the unexpected result of the instant invention, which is to provide a road structure which clearly demarcates vehicular traffic and human activities.

19. The applicant respectfully submits that the instant invention also provides a very inexpensive solution to traffic and environmental problems. Conventionally, highways are developed for resolving traffic jams, but highways are very expensive to build and maintain. The instant invention utilizes the ground floor/layer as exclusive motorway. Thus, highways are no longer necessary.

20. Applicant believes that for all of the foregoing reasons, all of the claims are in condition for allowance and such action is respectfully requested.

The Cited but Non-Applied References

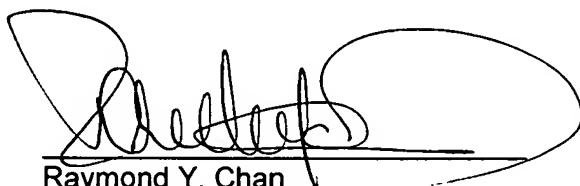
21. The cited but not relied upon references have been studied and are greatly appreciated, but are deemed to be less relevant than the relied upon references.

22. A fee in an amount of US\$405.00 is submitted herewith to pay the fee for Request for Continued Examination (RCE). This amount is believed to be correct. However, the Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account No. 502111.

23. In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration and withdrawal of the rejection are requested. Allowance of claims 41-55 at an early date is solicited.

24. Should the examiner believe that anything further is needed in order to place the application in condition for allowance, he is requested to contact the undersigned at the telephone number listed below.

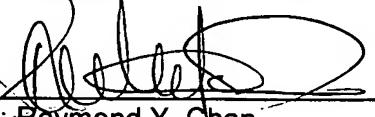
Respectfully submitted,



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I hereby certify that this correspondence is being deposited with the United States Postal Service with proper postage as first class mail in an envelope addressed to: "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" or being facsimile transmitted to the USPTO on the date shown below.

Signature: 

Name in print: Raymond Y. Chan

Date: 12/14/2000